IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3797 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VISHANK INDUSTRIES

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 3797 of 2002
MR NIRAV C THAKKAR for Petitioner No. 1
MR DN PATEL, Sr. Standing Counsel for Respondents.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 08/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

Rule. Mr. D.N. Patel, learned Standing Counsel appearing for the respondents waives service of rule.

At the instance of the learned Counsel appearing for both the sides and since the issue involved is a short one and resting on the order of the earlier Division Bench made on 21-1-2002 in the petition filed by this very petitioner (Special Civil Application no.10807 of 2001) and other cognate matters, we have taken up this petition for final disposal.

The only grievance that was raised on behalf of the petitioner is that the respondent no.3 was seeking to invoke the bank guarantees even though an appeal has been preferred against his order and despite the fact that an order is operating in favour of the petitioner pursuant to which the same cannot be invoked.

It will be noticed from the order dated 21-1-2002 made in Special Civil Application no.10807/2001 and other cognate matters that the Court had directed the Competent Officer to issue notice to the petitioners and take a decision in accordance with law after hearing them. The Competent Authority was required to make a speaking order dealing with the contentions that may be raised by the petitioners. In that matter, an interim order was earlier made on 8-11-2001 by which a direction was issued that the goods in question on which customs duty was leviable shall be allowed to be cleared by the respondents on payment of customs duty leviable thereon and furnishing bank guarantee for the disputed 10% trade discount and for the differential amount of duty between the contract price as being assessed pursuant to the Standing Order no.7495 dated 13-12-1999 and the price mentioned in the Notification no.52/2001-CUS(N.T.) dated 9-10-2001. By the order dated 21-1-2002 while disposing of the petitions, it was directed that: " The interim order will continue to operate between the parties till the matter is finally adjudicated by the authorities under the Customs Act and for two weeks thereafter on condition that the bank guarantees given by the petitioners are kept alive till such date."

It is admitted that the bank guarantees had been kept alive but the apprehension of the petitioner is that in view of the order made by the Deputy Commissioner of Customs on 1-3-2002, the bank guarantees would be encashed against the recovery of differential amount of duty arising out of the final assessment after two weeks from the date of the issuance of the said order. It

appears that on 27-3-2002, a letter is written by the Commissioner to the bank requesting for encashment of the guarantees. It is stated by the learned Counsel for the petitioner that the bank guarantees of the petitioner are not encashed till today.

The interim order which was made by the Court on 21-1-2002 in the petitioner's case and other cognate matters was ordered to continue till the matter is finally adjudicated by the authorities under the Customs Act and for two weeks thereafter. This would show that the interim relief would operate not only till the original authority adjudicates the matter, but also when appeal was filed within time till the appellate authority decides the same. The meaning of the order made on 21-1-2002 is thus clear and it is expected that the authorities will abide by the said interim order which will continue to operate between the parties till the matter would finally be adjudicated by the authorities under the Customs Act which would also include the appellate authority. Therefore, there is no occasion to make any fresh order in the matter requiring the authorities not to encash the bank guarantees given by the petitioner when the appeal is already filed and pending before the appellate authority for adjudication under the Act. This position should obviously be brought to the notice of the concerned authorities and the bank so that orders issued earlier by the Court are not violated. In this view of the matter, the present petition is misconceived and no further orders are required to be made. Rule is discharged with no orders as to costs. Direct service is permitted.

(R.K.Abichandani,J.)

(Kundan Singh,J.)

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